



Larkin Hoffman

8300 Norman Center Drive
Suite 1000
Minneapolis, Minnesota 55437-1060

GENERAL: 952-835-3800
FAX: 952-896-3333
WEB: www.larkinhoffman.com

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Karin Sonneman
Winona County Attorney
171 West Third Street
Winona, MN 55987

Winona County Board of Commissioners
177 Main Street
Winona, MN 55987

Re: Proposed Zoning Ordinance Amendment Banning the Mining, Processing, Storing and Transporting of Industrial Minerals

Dear County Attorney Sonneman and Board Members:

We have been retained by a coalition of potentially affected property owners and citizens concerned about property rights in Winona County to assess the legality of the amendment to the Winona County Zoning Ordinance proposed for action today to prohibit mining, processing, storing and transporting industrial sand ("Amendment") and advise them of their legal options should the Winona County Board of Commissioners ("Board") adopt the proposed Amendment. While our final analysis cannot be complete until the Board takes final action, should the Board adopt the Amendment as described in the Board agenda for its November 22 meeting we fully expect to conclude that the Board exceeded its legal authority in adopting the Amendment, that the Amendment is illegal on its face and that a declaratory judgement action brought to declare the Amendment illegal is highly likely to be successful.

Most importantly, the Winona County record clearly shows that there is no inherent difference in scale or activities related to mining, processing, storing or transporting "Industrial Minerals" and those related to mining, processing, storing or transporting "Construction Materials" as those terms are defined in the Amendment. Thus, the County Board has before it an astounding question rarely even contemplated by a local government in Minnesota – can we legally amend our land use ordinance to prohibit one activity and allow another based solely on the end use of the product produced? If adopted, the County will be forced to defend the ban while conceding that the end use of Industrial Minerals often occurs outside of Winona County and outside the state of Minnesota with no impact on Winona County residents.

Your County Attorney recommends action based on findings that selectively ignore contrary information contained in your record. As just one example, the County Attorney cites statements by two local doctors to support findings regarding the impact of particulate matter air emissions from silica sand activities. Neither has professional credentials related to the air emissions or

water discharges that might cause health effects from Industrial Mineral activities. She also supports her findings by referencing field studies on the potential exposure to silica for workers at hydraulic fracturing sites, an activity that does not occur anywhere within hundreds of miles of Winona County.

And most importantly, you must consider the two most credible sources of information on the topic of particulate matter emissions that have been submitted to the Board and the Winona County Planning Commission and are part of your record even though your County Attorney fails to mention them in her findings:

1. The "Health Impact Assessment of Industrial Sand Mining in Western Wisconsin." published by the Institute for Wisconsin's Health in 2016. That HIA was produced in cooperation with 15 local and tribal health departments in Western Wisconsin near Winona County. One of its many conclusions is that "it is unlikely that community members will be exposed to respirable crystalline silica from industrial sand mining as currently regulated; therefore, health effects from exposure are unlikely."
2. The data collected from Minnesota facilities by the Minnesota Pollution Control Agency, the additional data collected by the MPCA in Winona and the related control site and the extensive data collected from mining and processing facilities in Wisconsin, which collectively provide a tremendous amount of actual particulate matter monitoring data from facilities. That data unequivocally demonstrates that levels of small particulates from silica sand facilities in Minnesota and Wisconsin are well below the Minnesota Department of Health "Health Based Value" of 3 micrograms per cubic meter.

Similarly, the County Attorney's findings of fact and conclusions lack any support for finding that silica sand mining and processing activities would impact surface or groundwater in any way unique to "Industrial Mineral" activities. And the County Attorney's proposed findings lack ANY findings to support the bans in the Amendment of "the washing, cleaning, screening, crushing, filtering, drying, sorting, stockpiling, and storing of silica sand," "the hauling and transporting of silica sand" or building "a facility for transporting silica sand to destinations by rail, barge, truck, or other means of transportation." Your County Attorney recommends adopting those bans without any findings supporting them.

Clearly your record for this matter lacks any credible information supporting the Amendment and is replete with information clearly showing at a minimum:

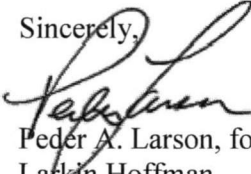
- The Amendment fails to establish a rational basis related to protection of the health, safety or general welfare of the community, as required under Minnesota law that would justify the distinctions drawn by the Amendment;
- The Amendment violates the Equal Protection Clause of the Minnesota Constitution and the Fourteenth Amendment of the United States Constitution; and

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- The Amendment would unlawfully burden the flow of interstate commerce in violation of the Dormant Commerce Clause of the United States Constitution.

Potentially impacted local landowners and concerned citizens are preparing to defend their rights and hold the Board accountable for the adoption of the Amendment, which we strongly believe the Board cannot legally adopt. Accordingly, we encourage the Board to reject the Amendment and direct staff to draft reasonable and lawful zoning standards for the regulation of mining.

Sincerely,



Peder A. Larson, for
Larkin Hoffman

Direct Dial: 952-896-3257
Email: plarson@larkinhoffman.com

